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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,287	10/06/2000	Allan E. Brockenbrough	782.1082/DSG	8376
21171	7590	12/02/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			ESCALANTE, OVIDIO	
			ART UNIT	PAPER NUMBER
			2645	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/679,287

Applicant(s)

BROCKENBROUGH ET AL.

Examiner

Ovidio Escalante

Art Unit

2645

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-41 and 43.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Advisory Action Attachment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

**OVIDIO ESCALANTE  
PATENT EXAMINER**

*Ovidio Escalante*

Ovidio Escalante  
Primary Examiner  
Art Unit: 2645

" Continuation of 3. NOTE: Claims 1,27,39 and 41, raises new issues since the newly added limitation " looping the selected sound sample as background sound upon determining a time duration of the selected sound sample is less than a time duration of the selected sound sample" was not considered before in these independent claims.

***Advisory Action***

*Regarding claim 26*, Applicant contends that Ball does not teach each of the four claimed features of 1) voice mail message area, 2) an audio header preceding the message area, 3) an audio footer following the message area, and 4) an audio body in the message area. The Examiner respectfully disagrees.

The Examiner believes that give the broad scope of this claim, then table 1 of Ball clearly anticipates the claim. The claim calls for (1) a message area containing a voice message. In col. 8, lines 1-18, Ball teaches the generated message, which is in audio form, may appear as shown in Table 1. Table one comprises a message area which contains a message that will be played to a user. Regarding (2) “an audio station header”, Ball teaches of the header of <PML> which is followed by <AUDIO SRC= “inspirational.au” BACKGROUND/>. Regarding (3) “an audio stationary footer, Ball teaches the footer </PML> which is preceded by “January 26, 1999 from 3:00PM to 5:00PM. Regarding (4) “an audio stationary body occurring at least one in said message area in combination with the voice message”. Ball teaches of a plurality of audio data which include “for.au, from.au, thanks.au, course.au and when.au”. Therefore, the examiner maintains that Ball anticipates the claim.

*Regarding claim 40*, Applicant contends that Ball does not teach combining the selected sound sample with a recorded greeting to form a combination greeting and looping the background sound. The Examiner respectfully disagrees.

As shown in the table and throughout the Ball Patent, Ball teaches that the background sound is played for the duration of the voice message, therefore, the background sound is played until a predetermined event, such as the end of message, is met. Looping music, by definition,

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lasts until a predetermined event has occurred. Since the background music of Ball is played for the entire duration, then Ball inherently loops the music for the entire message. If Ball did not loop the music then the Ball would have failed to meet one of its stated goal of providing background music for the duration of the music. Therefore, the Examiner maintains that Ball teaches of looping the music until a predetermined event has occurred.

*Regarding claim 43*, Applicant argues that Kawashima does not teach the features including prompting of the caller to select one of a plurality of sound samples and looped for a duration corresponding to a duration of the voice message, in the lines cited or anywhere else. The Examiner respectfully disagrees.

Kawashima teaches in col. 21, lines 38-53 that the background music sound has been selected from among data stored. This background music is selected by a user so that they can add it to there message. In col. 4, lines 37-43, Kawashima teaches “musical data is looped by a predetermined number of times.”. Therefore, Kawashima teaches the selected sound sample being looped for a duration corresponding to a duration of the voice message.